

PT 95-4  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
SPRINGFIELD, ILLINOIS

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NATIONAL TRAINING AND      )   Docket No.(s)  92-16-1127
INFORMATION CENTER        )
                           )   PI No.(s)  17-05-415-012
                           )           17-05-415-013
                           )           17-05-415-014
                           )           and
                           )           17-05-415-027
                           )           (Cook County)
                           )
Applicant                  )
                           )
v.                          )
                           )
                           )
                           )
THE DEPARTMENT OF REVENUE  )
OF THE STATE OF ILLINOIS  )   George H. Nafziger
                           )   Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

APPEARANCES Mr. Brian L. Wolfberg, attorney for Applicant, appeared on behalf of Applicant.

SYNOPSIS A hearing was held in this matter on August 29, 1994, to determine whether or not the parcels here in issue and the building thereon, qualified for exemption from real estate tax for the 1992 assessment year.

Is Applicant a charitable organization? Did Applicant own the parcels here in issue and the building thereon, during all of the 1992 assessment year? Did Applicant use all of the parcels here in issue and the building thereon, for charitable purposes during all of the 1992 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that Applicant is a charitable organization, that it owned the parcels here in issue and the building thereon, during all of 1992, and

that it used said parcels and building for charitable purposes during the 1992 assessment year, except for the area of the basement occupied by Chicago Electric Options Campaign (hereinafter referred to as "CEOC"), during January and February 1992, and one parking space for the entire 1992 assessment year.

FINDINGS OF FACT The Department's position in this matter, namely that Applicant failed to establish that this property was owned by a charitable organization and used for charitable purposes during 1992, was established by the admission in evidence of Department's Exhibits 1 through 6C.

On June 14, 1993, the Cook County Board of Appeals forwarded a Statement of Facts in Exemption Application, concerning the parcels here in issue and the building thereon, for the 1992 assessment year, to the Illinois Department of Revenue (Department's Exhibit 2). On December 2, 1993, the Department of Revenue notified Applicant that it was denying the exemption of the parcels here in issue and the building thereon, for the 1992 assessment year (Department's Exhibit 3). On December 9, 1993, the administrator of Applicant wrote a letter to the Department of Revenue, requesting a formal hearing in this matter (Department's Exhibit 4). The hearing held on August 29, 1994, was held pursuant to that request.

Applicant was incorporated on December 19, 1972, pursuant to the "General Not For Profit Corporation Act" of Illinois, as the Housing Training and Information Center, for purposes which included the following:

"To operate exclusively for charitable and educational purposes, including but not limited to improvement of the condition of the urban poor and underprivileged, and the victims of discriminatory and unethical housing practices within the nation's communities."

By an amendment to the Articles of Incorporation, dated March 18, 1976, the name of the corporation was changed to National Training and Information Center.

Applicant acquired the parcels here in issue and the building thereon,

by warranty deeds, dated May 5, 1987. During 1992, said parcels were improved with a one-story office building with basement and a parking lot. During 1992, the main floor of the building contained a large open office area with desks and file cabinets, a meeting room, a computer room, a small pantry, and men's and women's restrooms. During 1992, the basement of the building contained a small meeting room, a large open conference/training session space, which had capacity of 150 people, a small photographic darkroom, and also men's and women's restrooms. During January and February 1992, an area of one corner of the basement was occupied by CEOC. CEOC paid \$200.00 per month rent to Applicant, to rent said area during January and February 1992.

The parking lot on the parcels here in issue had 24 marked spaces during 1992. The lot had an entrance off of Milwaukee Avenue, and was fenced with a low fence. There were signs in the lot, indicating it was for customer parking only. Applicant had sold the back part of the property to a woman who was an interior decorator. Because her property was landlocked, Applicant agreed to rent her one parking space for \$50.00 per month on the lot here in issue, during 1992.

During 1992, Applicant's programs included holding workshops and meetings to assist neighborhood groups and Chicago business and governmental organizations to set up a low-income lease to purchase homeownership assistance program. Another program which Applicant was involved in during 1992, was the Chicago Area Housing Alliance program. This program involved Applicant being involved in a number of local Chicago housing issues. One such issue emphasized during 1992, was trying to get the building court system to function. During 1992, over one and a half million dollars in fines were collected from Chicago landlords who failed to correct building violations. Also, during 1992, Applicant was involved in the Community Reinvestment Program, which over a nine-year period

resulted in the investment of about \$465 million dollars in low-income and moderate income minority housing in the City of Chicago. During 1992, Applicant also was involved in drug and anticriminal programs.

In addition, Applicant conducted training sessions for community people in leadership skills three times a year, as well as holding quarterly meetings of the program groups with which it was working. In addition, Applicant provided leadership training to community groups around the country. While Applicant charged for its consulting services, training sessions, and workshops, it was Applicant's policy to waive or reduce fees in cases of need. During 1992, Applicant received government and private contributions, and grants, totaling \$861,383.00. During that same period, Applicant collected consulting fees, tuition for workshops and training sessions, and subscription and publication fees, totaling \$10,320.00. During 1992, Applicant had no capital stock or stockholders.

CEOC occupied a small area of the basement of the building on the parcels here in issue during January and February 1992, and paid \$200.00 per month rent for the space it occupied. Applicant's witnesses characterized CEOC as a separate corporation, organized to conduct a campaign to keep electric utility rates low, for low and moderate income people. This campaign began at the time that Commonwealth Edison Company was renegotiating its franchise with the City of Chicago. The Articles of Incorporation and bylaws of CEOC were not offered in evidence. Additionally, the financial statements of CEOC were also not offered in evidence. Consequently, the actual purposes of CEOC were not established. In addition, its sources of income for 1992, or its activities during that year, were also not established. Consequently, there is not sufficient evidence in this file to determine whether or not CEOC is, or is not, a charitable organization, and also whether or not CEOC used the area it occupied of the basement of the building on the parcels here in issue

during January and February 1992, for charitable purposes.

1. I find that Applicant owned the parcels here in issue during 1992.

2. I find that since Applicant waived or reduced all charges and fees in cases of need during 1992, that the benefits of Applicant's services were available to an indefinite number of persons, that charity was dispensed to all who needed and applied for it, and that no obstacles were placed in the way of those seeking the benefits.

3. I find that Applicant had no capital, capital stock, or shareholders during 1992, and did not profit from the enterprise.

4. Applicant's funds were primarily derived from public and private charity, and were held in trust for the objects and purposes expressed in its charter during 1992.

5. I find that Applicant used the parcels here in issue and the building thereon, for charitable purposes during 1992, except for the area of the basement rented to CEOC for January and February 1992, and the one parking space, which was rented for the entire year.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

35 ILCS 205/19.16 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"Parking areas, not leased or used for profit, when used as a

part of a use for which an exemption is provided hereinbefore and owned by any...charitable institution which meets the qualifications for exemption."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that Applicant met the foregoing six guidelines, concerning the parcels here in issue and the building thereon, except as to the area of the basement of the building rented to CEOC during January and February 1992, and the parking space rented to the neighboring property owner for all of the 1992 assessment year.

Concerning the area of the basement rented to CEOC, I have found that

evidence was not provided which was sufficient to establish that CEOC met the six guidelines found in the Methodist Old Peoples Home case cited above. Applicant's attorney, in his brief, contends that the decision in Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972), supports Applicant's contention that the rent paid by CEOC was not received with a view towards profit. The Supreme Court in that case held that where one exempt entity leased property to another exempt entity, which used said property for an exempt purpose, the lease would not be considered a lease for profit. In this case, however, I have found that Applicant has not established that CEOC is an exempt organization. Consequently, this contention is without merit.

In addition, it should also be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (1988), leave to appeal denied. In the situation where an identifiable portion of the property was used for any exempt purpose while the remainder was used primarily for nonexempt purposes or not at all, the Courts have held that the portion used for exempt purposes qualified for exemption, and the remainder did not qualify. City of Mattoon v. Graham, 336 Ill. 180 (1944). Consequently, the area occupied by CEOC during January and February 1992, should remain on the tax rolls for that period.

Concerning the renting of the parking space to the interior decorator, clearly this parking space was not used for a use for which an exemption is provided, as required by 35 ILCS 205/19.16. Consequently, I conclude that said parking space was leased for profit.

Based on the foregoing, I conclude that Applicant is a charitable organization, and that it owned the parcels here in issue and the building

thereon, during the entire 1992 assessment year.

I further conclude that Applicant used the parcels here in issue and the building thereon, for charitable purposes during the 1992 assessment year, except the area of the basement of the building rented to CEOC during January and February 1992, and the parking space rented to the interior decorator during 1992. I conclude that the area of the basement of the building rented to CEOC during January and February 1992, and the parking space rented to the interior decorator during all of 1992, were leased for profit.

I therefore recommend that Cook County parcels 17-05-415-012, -013, -014, and -027 and the building thereon, be exempt from real estate tax for the 1992 assessment year, except for the area of the basement of the building leased to CEOC for 16% of the 1992 assessment year, and one parking space for the 1992 assessment year.

I further recommend that the area of the basement of the building on the aforesaid parcels remain on the tax rolls for 16% of the 1992 assessment year, and also that one parking space located on said parcels remain on the tax rolls for the entire 1992 assessment year.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

February , 1995